

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KAKHA ABULADZE, ERKEGUL ALSHIMBAY,
TEMURBEK AMONOV, ALBERT ARTABAEV,
OLESYA BALAKIREVA, PARVIZ BASHIROV,
KETEVAN CHACHUA, SAYANA DOMSHOEVA,
NATIA DUDUCHAVA, GIORGI GABISONIA, ALISHER
JABBAROV, ILYA KALPAKBAYEVA, NADEZHDA
KHALTANOVA, BEKA KHIPASHVILI, NATALIA
LAPINA, ANUKI LOMIDZE, GVANTSA
MIERZEJEWSKI, A/K/A CHRISTINA
MARGASLITASHVILI, CHINGIZ MIRZAMSEITOV,
IRINA MITROKHINA, AIDAR ORYNBEKOV,
VALENTINA POKROVSKAIA, NURSULU
TAUKEBAYEVA, DEZERASSA TEMIRAEVA,
AKZHARKYN YEDRISSOVA, TAMAR ZABAKHIDZE,
ANNA TCEBEKOVA, individually and on behalf of all
others similarly situated,

Plaintiffs,

- v -

APPLE COMMUTER INC., BIREN J. SHAH, EDISON
MANAGEMENT CO. LLC, AKA EDISON HOTEL, 237
WEST 54 OWNER LLC A/K/A HILTON GARDEN INN
(54), HHLP 52 LESSEE LLC A/K/S HILTON GARDEN
INN (52), PNY III LLC A/K/A HILTON
MANHATTAN/WESTGATE, CDL HOTELS USA INC.
A/K/A MILLENNIUM HILTON HHLP DUO THREE
LESSEE LLC A/K/A HOLIDAY INN EXPRESS, BRISAM
MANAGEMENT DE LLC A/K/A HOLIDAY INN
CHELSEA, PATEL KHANBUDHAI/COMFORT INN
CHELSEA/HERITAGE HOTEL, COMFORT INN A/K/A
COMFORT INN TIMES SQUARE, NEW GENERATION
MANAGEMENT CORP. A/K/A LA QUINTA /HOTEL AT
5TH AVENUE, WOLCOTT HOTEL CO. A/K/A
WOLCOTT HOTEL, S&G HOTEL CORP. A/K/A ST.
JAMES HOTEL, EROS MANAGEMENT & REALTY LLC
A/K/A TRYP BY WYNDHAM, THE SHOREHAM LLC
A/K/A SHOREHAM HOTEL, HAMPTON INN A/K/A
HAMPTON INN TIMES SQ SOUTH, NEW YORK
MARKETING INC A/K/A NYMA, MOOSAZADEH,
HAMAYOON, DIEDERICH, MICHAEL A/K/A HOTEL
AT TIMES SQUARE, HHLP DUO TWO LESSEE LLC
CANDLEWOOD SUITES, EXECUTIVE LE SOLEIL NEW

Case No.: 22 cv 8684
(MMG)(RFT)

**MEMORANDUM
IN OPPOSITION**

YORK LLC AKA EXECUTIVE HOTEL LE SOLEIL NEW YORK, 228 WEST 47 STREET XYZ CORP., 237 WEST 54 STREET XYZ CORP., 206 EAST 52 STREET XYZ CORP., 304 EAST 42 STREET XYZ CORP., ONE UNITED NATIONS PLAZA XYZ CORP., 343 WEST 39 STREET XYZ CORP., 232 WEST 29 STREET XYZ CORP., 17 WEST 32 STREET XYZ CORP., 4 WEST 31 STREET XYZ CORP., 109 WEST 45 STREET XYZ CORP., 345 WEST 35 STREET XYZ CORP., 337 WEST 39 STREET XYZ CORP., 6 WEST 32 STREET XYZ CORP., 59 WEST 46 STREET XYZ CORP., 38 WEST 36 STREET XYZ CORP., AND JOHN/JANE DOE,	
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Defendants.

PRELIMINARY STATEMENT

Apple Commuter Inc. and Biren Shah (collectively, “Apple”), through their undersigned counsel, respectfully oppose plaintiffs’ motion to certify a Rule 23 Class Action, appoint two (2) of the party plaintiffs as class representatives, appoint class counsel and other relief as set forth in the motion and supporting declaration, filed at Docket 318 and 319, respectively.

Apple never agreed to the terms of a class action settlement. The terms of the settlement reached by Apple were placed on the record in court following a settlement conference in which all relevant parties participated, on February 7, 2025.

For the reasons described in the Declaration in Support filed by Plaintiffs’ counsel [Docket 319], the relief should be denied. The parties have not conducted class action discovery. There is no basis on this record to simply assume that there are similarly situated individuals to the plaintiffs, or that the numerosity element is satisfied. Indeed, the only discovery we have on the issue of potential class members is the court’s inquiry/order of May 12, 2025, which provides as follows:

ORDER: On May 6, 2025, I ordered Plaintiff's counsel to provide a list of all individuals who worked at Apple Commuter and/or the Hotel Defendants, along with other information. Defendants Apple Commuter and Shah are ordered, by May 20, 2025, to inform Plaintiffs and the Hotel Defendants whether they are aware of any additional individuals who worked during the time period at issue in this case at Apple Commuter and/or the Hotel Defendants. (HEREBY ORDERED by Magistrate Judge Robyn F. Tarnofsky) (Text Only Order) (ah)

In response to the court's order, Apple stated that it has no contact information for any of the few individuals whom Plaintiffs identified, are not aware of any other individuals, and has no concierge staff presently or since the onset of Covid-19 related closures.

There is no basis on the motion papers to assume that class certification is or could be appropriate. Simply stated, no class discovery was conducted. Based upon the limited discovery exchanged and the record filed herein, there is simply no basis to assume that there are any current or former employees of the defendants who are "similarly situated" to plaintiffs by suffering from a common policy or plan devised to pay them wages below the applicable statutory minimum wage, or to not pay them at the rate of time and one-half as overtime compensation for each hour worked in excess of forty (40) per week. The plaintiffs themselves negotiated a settlement in this case and have the right to proceed with the settlement they reached with Apple, for their benefit and not for the benefit of a claims administrator, counsel and other unknown individuals who have not joined the action for their own reasons.

The supporting declaration of counsel taken as a whole makes it clear that even collective action certification would be inappropriate. Certification of a class action is therefore wholly inappropriate in this case, was never contemplated by Apple in its resolution of the case in court earlier this year, and would be flawed in so many respects as to make it illogical and inappropriate.

CONCLUSION

For all the foregoing reasons, and because the motion is insufficient for the court to determine that class action certification would be appropriate, it is respectfully requested that the Court deny Plaintiffs' motion in its entirety.

Dated: New York, New York
July 2, 2025

Respectfully submitted,

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and Biren Shah
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By: 

Peter H. Cooper (PHC 4714)

To: All Parties of Record (Via ECF)